

CLIENT ASSISTANCE PROJECT

LEGAL ADVOCACY FOR PERSONS
WITH DEVELOPMENTAL DISABILITIES

MENTAL HEALTH LAW PROJECT

PROTECTION AND ADVOCACY FOR
INDIVIDUAL RIGHTS

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December 12, 1997

Cynthia Johnson, Director
Cash Management and Policy Division
Financial Management Services, Room 420
401 14th Street S.W.
Washington D.C., 20227

Dear Ms. Johnson:

I am a staff attorney at the Minnesota Disability Law Center. Our office provides legal assistance and advice to persons with disabilities when the particular issues facing them are in some way caused or exacerbated by their disabilities. I am writing to comment on the rules you intend to implement as they are proposed at 62 F. R. 179, pp. 48714-48726, published September 19, 1997.

Department of the Treasury put interim rules in place starting July 26, 1996 in accordance with 31 U.S.C. §3332. The interim rule is seen as Phase 1, and states that all recipients who qualify to receive SSI, RSDI or other government benefits, except for tax returns, after the date of July 26, 1996, must set up a bank account and receive those benefits by electronic funds transfer, EFT. The comments to the current proposed rules indicates that the philosophy behind this rule is to encourage people to bank their money, to have banking accounts, to join the mainstream, in other words. If a recipient was receiving benefits prior to July 26, 1996, he/she could request one of the waivers available to such recipients. The comments indicate that Department of Treasury officials believed that anyone who became eligible for benefits after the cut-off date of July 26, 1996 would enter the system knowing they had to have an account immediately, and therefore there would be no problem with them getting used to a new system. There is a very real problem with this reasoning, and our office is seeing more and more persons with disabilities who are having trouble receiving benefits after they become eligible. Furthermore, counties in Minnesota are following the federal lead, without allowing time for waivers, and are converting everyone to electronic benefits transfer programs. This is causing persons with disabilities who cannot access their electronic benefits deposits to go without the benefits.

It is unfortunate that the Department of Treasury did not listen to the comments of advocates and recipients when the interim rule was proposed. The current proposed rule is to go into effect in 1999. It is assumed by that time that most of the waivers that are in place, for those who were

December 12, 1997

Page 2

eligible for benefits before July 26, 1996, will no longer be necessary. One of the waivers listed at § 208.4 of the proposed rules is for persons, eligible before July 26, 1996, who due to physical hardship cannot use the EFT method. The example given is where a person with a physical disability can't walk far enough to get to the bank but can cash their check at the neighboring store. The reality of the situation is that many of the machines set up in stores for food stamp cards, many of the ATM's set up in banks, are not accessible. It is not likely that they will be accessible by 1999 or by 2000 either when the waiver is slated to end. And, of course, the waiver only applies to those with physical disabilities who were lucky enough to be eligible for, or receiving benefits before July 26, 1996. For those who became disabled after that time, somehow, miraculously, they are to find accessible means of establishing and drawing from their accounts through the use of these inaccessible ATM's. In many banks, now, if a person doesn't use an ATM but uses a teller, which is what many disabled persons will have to do, they get charged an extra fee just to talk to a person. Yes, it can be argued that such fees are a violation of the Americans with Disabilities Act, but how many low-income persons with disabilities are going to take on the system and argue the point. The ultimate losers are persons with disabilities attempting to receive their benefits. I therefore protest the philosophy which continues to be expressed with this permanent rule and think that the Department of the Treasury should revisit the whole waiver issue for newly eligible recipients as well as ones already covered by the waivers in place. While I agree with the general comment to the current proposed rule that generally electronic deposits are safer and cause less theft of money, I think they can create a hardship for persons with disabilities as well.

The other issue I have concerns about in the current proposed rule is the definition of § 208.2(b), "authorized payment agent." The comments indicate that objections were made and concerns raised about authorized payment agents during the interim rule-making process, that advocates commented that there must be either limitations placed on who could be authorized payment agents, or the public must be educated regarding the pitfalls of authorized payment agents. Department officials apparently decided that since the current EFT system is only capable of transferring funds to financial institutions, that there wasn't a problem. We in Minnesota know already that the interim rule has created problems. Many low income people, whether they have disabilities or not, have traditionally not had banking accounts. When their benefits checks came, they went to check cashing stores who cashed their checks for them for a percentage of the check. Now, as a result of these rules, these stores are aggressively advertising for persons receiving EFT benefits to authorize them as payment agents. There is nothing in the rule which prevents financial institutions from partnering with such check cashing operations and releasing the money of recipients to them, which apparently some banks do. The check cashing stores will charge a fee to set up an account and, of course, charge a percentage of the check for the privilege of cashing the check. They are using scare tactics such as ads that say that if a person doesn't set up an account they will no longer get benefits. I believe this is exploitation of a population who is specifically vulnerable to such exploitation. If the Department of the Treasury does not want to place limits on who can be authorized payment agents, they should at least undertake educating the public about the benefits of opening a bank or credit union account as

December 12, 1997

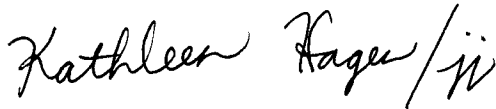
Page 3

opposed to relying on such check-cashing operations. Or, they should order check-cashing operations to give persons something equivalent to a Truth in Lending statement telling them how much money they are losing by having a check cashing company cash their checks for them.

These are my two concerns. They were my concerns with the interim rule. They continue to be my concerns with the proposed permanent rule. I hope you will take these concerns into consideration and revisit both of these issues.

Sincerely,

Minnesota Disability Law Center

A handwritten signature in cursive script that reads "Kathleen Hagen/jr". The signature is written in dark ink and is positioned above the typed name.

Kathleen R. Hagen
Attorney-at-Law